

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████

Appellant.

_____ /

Docket No. 2014-9666 HHS

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and offered testimony. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW) appeared as a witness for the Department.

On ██████████, a hearing was conducted in regards to the Department initiating a closure of the Appellant's Home Help Services (HHS). On ██████████, Administrative Law (ALJ) Judge ██████████ issued a Decision and Order reversing the Department. I am taking judicial notice of the ██████████ Decision and Order. That Decision and Order led to subsequent actions taken by the Department that resulted in the Appellant filing a request for hearing in this matter.

ISSUE

Did the Department properly determine the Appellant's HHS hours?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On ██████████, the Department sent the Appellant an Advance Action Notice, which informed her that effective ██████████ the HHS case would be terminated because she has a legal spouse in the home and the spouse's medical verification did not indicate he is unable to care for the Appellant. (Judicial Notice of ██████████ Decision and Order)
2. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Judicial Notice of ██████████ Decision and Order)

3. On ██████████, ALJ ██████ issued a Decision and Order. The Decision and Order, ordered the Department to reinstate the Appellant's case and re-assess the Appellant's husband's ability and availability to care for the Appellant. (Judicial Notice of ██████████ Decision and Order)
4. On ██████████, the ASW met with the Appellant for an in home assessment. (Exhibit B, pp. 6, 7; Exhibit A, pp. 12-14)
5. On ██████████, the ASW interviewed the Appellant's husband. (Testimony)
6. On ██████████, the Department sent the Appellant a DHS-1210A, Services and Approval Notice. The notice indicated the Appellant was approved for HHS in the amount of \$ ██████ a month effective ██████████.
7. Prior to ██████████, the Appellant was receiving more than \$ ██████ a month for HHS. (Exhibit A, pp. 16a, 18; Exhibit B, pp. 4; Testimony)
8. On ██████████, the Michigan Administrative Hearings System received the Appellant's request for hearing. (Exhibit A, pp. 4-6).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

HHS are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a physician and may be provided by individuals or by private or public agencies.

Adult Services Manual (ASM) 101, 11-1-11, addresses HHS payments:

Payment Services Home Help

Home help services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements.

Home help services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

*ASM 101,
12-1-2013, Page 1 of 4.*

ASM 105, 12-1-2013, addresses HHS eligibility requirements:

Requirements

Home help eligibility requirements include all of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

Necessity For Service

The adult services specialist is responsible for determining the necessity and level of need for home help services based on:

- Client choice.
- A completed DHS-324, Adult Services Comprehensive Assessment. An individual must be assessed with at least one activity of daily living (ADL) in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater.

- Verification of the client's medical need by a Medicaid enrolled medical professional via the DHS-54A. The client is responsible for obtaining the medical certification of need; see ASM 115, Adult Services Requirements.

ASM 105,
12-1-2013, Pages 1-3 of 3

ASM 120, 12-1-2013, pages 1-5 of 5 addresses the adult services comprehensive assessment and responsible relatives:

INTRODUCTION

The DHS-324, Adult Services Comprehensive Assessment is the primary tool for determining need for services. The comprehensive assessment must be completed on **all open independent living services cases**. ASCAP, the automated workload management system, provides the format for the comprehensive assessment and all information will be entered on the computer program.

Requirements

Requirements for the comprehensive assessment include, but are not limited to:

- A comprehensive assessment will be completed on all new cases.
- A face-to-face contact is required with the client in his/her place of residence.
- The assessment may also include an interview with the individual who will be providing home help services.
- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- The assessment must be updated as often as necessary, but minimally at the six month review and annual redetermination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.

- Use the DHS-27, Authorization to Release Information, when requesting client information from another agency.
 - Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation; see RFF 1555. The form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion APS cases, see SRM 131 Confidentiality.

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the home help services payment.

Conduct a functional assessment to determine the client's ability to perform the following activities:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking Medication.
- Meal Preparation and cleanup.
- Shopping.
- Laundry.
- Light Housework.

Functional Scale

ADLs and IADLs are assessed according to the following five-point scale:

1. Independent.

- Performs the activity safely with no human assistance.
2. Verbal Assistance.
Performs the activity with verbal assistance such as reminding, guiding or encouraging.
 3. Some Human Assistance.
Performs the activity with some direct physical assistance and/or assistive technology.
 4. Much Human Assistance.
Performs the activity with a great deal of human assistance and/or assistive technology.
 5. Dependent.
Does not perform the activity even with human assistance and/or assistive technology.

Home help payments may only be authorized for needs assessed at the 3 level ranking or greater.

An individual must be assessed with at least one activity of daily living in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADLs if the assessment determined a need at a level 3 or greater.

See ASM 121, Functional Assessment Definitions and Ranks for a description of the rankings for activities of daily living and instrumental activities of daily living.

Time and Task

The specialist will allocate time for each task assessed a rank of 3 or higher, based on interviews with the client and provider, observation of the client's abilities and use of the reasonable time schedule (RTS) as a **guide**. The RTS can be found in ASCAP under the Payment module, Time and Task screen. When hours exceed the RTS rationale **must** be provided.

An assessment of need, at a ranking of 3 or higher, does not automatically guarantee the maximum allotted time allowed by the reasonable time schedule (RTS). **The specialist must assess each task according to the actual time required for its completion.**

Example: A client needs assistance with cutting up food. The specialist would only pay for the time required to cut the food and not the full amount of time allotted under the RTS for eating.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all instrumental activities of daily living except medication. The limits are as follows:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven hours/month for laundry
- 25 hours/month for meal preparation

Proration of IADLs

If the client does not require the maximum allowable hours for IADLs, authorize only the amount of time needed for each task. Assessed hours for IADLs (except medications) must be prorated by **one half** in shared living arrangements where other adults reside in the home, as home help services are **only** for the benefit of the client.

Note: This does not include situations where others live in adjoining apartments/flats or in a separate home on shared property and there is no shared, common living area.

In shared living arrangements, where it can be **clearly** documented that IADLs for the eligible client are completed separately from others in the home, hours for IADLs do not need to be prorated.

Example: Client has special dietary needs and meals are prepared separately; client is incontinent of bowel and/or bladder and laundry is completed separately; client's shopping is completed separately due to special dietary needs and food is purchased from specialty stores; etc.

Responsible Relatives

Activities of daily living may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing

care. These disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

Example: Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

Example: Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

*ASM 120, 12-1-2013,
Pages 1-5 of 5*

Certain services are not covered by HHS. ASM 101 provides a listing of the services not covered by HHS.

Services not Covered by Home Help

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).
- Services provided for the benefit of others.

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- Services for which a responsible relative is **able** and **available** to provide (such as house cleaning, laundry or shopping).
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

ASM 101, 12-1-2013,
Pages 3-4 of 4

The ASW testified that she covered all ADL's and IADL's with the Appellant and the Appellant's provider during the re-assessment in ██████████. The ASW testified that based upon the re-assessment, she concluded the Appellant was only eligible for HHS in the ADL areas of Bathing (20 minutes a day 1 day a week), Dressing (10 minutes a day 5 days a week), Toileting (22 minutes a day 5 days a week), Transferring (6 minutes a day 5 days a week), Eating (5 minutes a day 5 days a week) and Mobility (14 minutes a day 5 days a week); and only eligible for IADL's in the areas of Housework (15 minutes a day 5 days a week), Laundry (15 minutes a day 1 day a week), Shopping (20 minutes a day, 1 day a week) and Meal Preparation (30 minutes a day 5 days a week).

Prior to the ██████████ time and task determination, the Appellant was eligible for a greater amount of time for HHS. During the hearing, the ASW testified the time and task assessment of \$ ██████████ was incorrect and she did not know exactly where that came from. Ironically, the ██████████ Decision and Order used this time and task assessment as a prior allotment of HHS benefits.

Compounding the matter is even if we used what the ASW identified as being a prior time and task assessment (Exhibit B, p. 14), the ASW was unable to identify why specific reductions (other than days from 7-5) were made, specifically the reduction in minutes per day for Bathing (2 minutes), Dressing (6 minutes), Toileting (3 minutes), Mobility (2 minutes), Housework (6 minutes after being halved) and Laundry (9.5 minutes after being halved).

The Department in this matter did not specifically identify the reasons behind the reductions and offered little evidence to support a reduction outside of the shared living arrangement/responsible relative.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly determined the Appellant's HHS hours.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED.

The Department is ordered to:

- Initiate a re-assessment of the Appellant's eligibility for HHS retroactive to [REDACTED].

Corey A. Arendt
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
cc: [REDACTED]

Date Signed: 12/23/2013

Date Mailed: 12/23/2013

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant must appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.